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Person To Contact:

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Date:

February 02, 2010

Legend

Trust =

A =

B =

C =

State =

D1 =

D2 =

D3 =

Court =

X =

Dear _____ :

This letter responds to your letter dated June 18, 2008, and subsequent correspondence, submitted on behalf of Trust by Trust's authorized representative, requesting rulings under §§ 664 and 4941 of the Internal Revenue Code regarding the proposed reformation of Trust as a charitable remainder unitrust (CRUT).

The information submitted states that on D1, A and B created Trust with the intention that Trust qualify as a CRUT with a fixed percentage unitrust amount described under § 664(d)(2). A is the trustee of Trust. C, the child of A and B, is the Trust income beneficiary. A and B established Trust with the assistance of an attorney. However, due to a drafting error, the attorney failed in Trust executed to omit certain net income charitable remainder trust (NICRUT) provisions from an earlier draft of Trust. Consequently, Trust inadvertently contained certain NICRUT provisions.

The introductory paragraph of Trust describes a CRUT. However, Trust provides that the unitrust amount payable to C is the lesser of (1) Trust income during the taxable year, as defined in § 643(b), and, (2) x% of the net fair market value of the assets of Trust valued as of the first day of each taxable year of Trust. Since the inception of Trust, the trustee of Trust has administered Trust as a CRUT.

On D2, in order to correct the scrivener's error and because Trust is irrevocable, A sought an order from Court authorizing an amendment ab initio of Trust. No parties objected to the proposed reformation. On D3, Court issued an order reforming Trust to a CRUT, ab initio, subject to the Internal Revenue Service issuing a private letter ruling that the reformation of Trust will not disqualify Trust as a charitable remainder trust.

The drafting attorney has submitted an affidavit stating that he failed to omit certain NICRUT provisions from an earlier draft of Trust after A and B decided to create a CRUT. C has submitted an affidavit stating that she has not taken, and will not take, a deduction for any amounts payable to her under the terms of the original or reformed Trust.

You now request the following rulings:

Ruling 1: The judicial reformation of Trust does not violate § 664, and Trust qualifies as a charitable remainder trust under § 664(d)(2) as of D1.

Ruling 2: The judicial reformation of Trust will not constitute an act of self dealing within the meaning of § 4941.

Ruling 1

Section 664(d)(2) provides that for purposes of § 664, a charitable remainder unitrust is

a trust -- (A) from which a fixed percentage (which is not less than 5 percent nor more than 50 percent) of the net fair market value of its assets, valued annually, is to be paid, not less often than annually, to one or more persons (at least one of which is not an organization described in section 170(c) and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life of or lives of such individual or individuals, (B) from which no amount other than the payments described in § 664(d)(2)(A) and other than qualified gratuitous transfers described in § 664(d)(2)(C) may be paid to or for the use of any person other than an organization described in § 170(c), (C) following the termination of the payments described in § 664(d)(2)(A), the remainder interest in the trust is to be transferred to, or for the use of, an organization described in § 170(c) or is to be retained by the trust for such a use, and (D) with respect to each contribution of property to the trust, the value (determined under section 7520) of such remainder interest in such property is at least 10 percent of the net fair market value of such property as of the date such property is contributed to the trust.

Section 664(d)(3) provides that notwithstanding the provisions of § 664(d)(2)(A) and (B), the trust instrument may provide that the trustee shall pay the income beneficiary for any year -- (A) the amount of the trust income, if such amount is less than the amount required to be distributed under § 664(d)(2)(A), and (B) any amount of the trust income which is in excess of the amount required to be distributed under § 664(d)(2)(A), to the extent that the aggregate of the amounts paid in prior years was less than the aggregate of such required amounts.

Section 1.664-3(a)(4) of the Income Tax Regulations provides that the trust may not be subject to a power to invade, alter, amend, or revoke for the beneficial use of a person other than an organization described in § 170(c).

Based solely on the information submitted and representations made, we conclude that the judicial reformation of Trust, as of D1, does not violate § 664. Furthermore, assuming that the terms of the reformed Trust are otherwise valid under § 664, the reformed Trust will be treated as a valid CRUT under § 664(d)(2), as of D1.

Ruling 2

Section 4941(a)(1) imposes an excise tax on disqualified persons for each act of self-dealing between a disqualified person, as defined in § 4946, and a private foundation.

Section 4941(d)(1)(E) defines self-dealing as including any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation.

Section 4946(a)(1) provides that the term “disqualified person” with respect to a private foundation includes a person who is a substantial contributor to the foundation

(including the creator of a trust), a family member of a substantial contributor (including children), and a foundation manager (including a trustee).

Section 4947(a)(2) provides, in pertinent part, that in the case of a trust which is not exempt from tax under § 501(a), not all of the unexpired interests of which are devoted to charitable purposes, and which has amounts in trust for which a charitable deduction was allowed, § 4941 and other provisions apply as if such trust were a private foundation.

Section 4947(a)(2)(A) provides, in pertinent part, that the provisions of § 4947(a)(2) do not apply with respect to the amounts payable under the terms of such split-interest trust to its income beneficiaries.

Sections 53.4947-1(c)(2) and 53.4947-1(c)(2)(ii), Example (1), of the regulations indicate, in pertinent part, that the payments of income under the term of the trust by a charitable remainder unitrust to its individual income beneficiaries do not result in any tax on self-dealing under § 4941.

As a charitable remainder unitrust under as of § 664(d)(2), Trust is a split-interest trust described in § 4947(a)(2). By being described in § 4947(a)(2), Trust is subject to the provisions of § 4941 and certain other provisions, as if it were a private foundation. A private foundation is subject to § 4941, which imposes an excise tax on acts of self-dealing. A and B, settlors, are disqualified persons with respect to Trust because they are substantial contributors to Trust. C, the income beneficiary, is a disqualified person because she is the daughter of A and B. Therefore, because the proposed judicial reformation of Trust based on a drafting error may have the effect of increasing the annual amount payable to C, any such increase could be considered to be a transfer to, or use by, or for the benefit of, a disqualified person of income or assets of a private foundation and may be considered to be an act of self-dealing under § 4941.

However, under § 4947(a)(2), the self-dealing rules of § 4941 do not apply to any amounts payable under the terms of a split-interest trust to income beneficiaries as long as no deduction was allowed for such income interest under §§ 170(f)(2)(B), 2055(e)(2)(B), or 2522(e)(2)(B) with respect to the income interest of any such beneficiary. C represents that no deduction, under the above Code sections, was taken by C with respect to any amounts of income payable to her by Trust. As a result, the self-dealing rules of § 4941 do not apply to C as an income beneficiary.

Regarding whether A and B as substantial contributors are subject to the self-dealing rules of § 4941, the circumstances presented above indicate that there is no act of self-dealing, since we are satisfied that the signatory parties to Trust never intended to create a NICRUT. Certain facts are indicative of this intent such as the fact that the drafting attorney submitted an affidavit indicating that Trust was supposed to be a CRUT instead of a NICRUT as well as Trust stating that the signatory parties, A and B,

indicated that this was a drafting error and that they never intended to create a NICRUT. Trust also represented that Trust was administered as a CRUT in accordance with its understanding of A and B's intent.

The proposed judicial reformation of Trust will not be an act of self-dealing under § 4941.

Except as specifically set forth above, no opinion is expressed as to the federal tax consequences of the above described facts under any other provision of the Code. Specifically, no opinion is expressed concerning whether Trust is or was a charitable remainder trust within the meaning of § 664.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to Trust's authorized representative.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: 2

Copy of this letter

Copy for § 6110 purposes